

AML ADVISORY COMMITTEE

Minutes Semi-Annual Meeting May 5, 2005

A regular meeting of the AML Advisory Committee was called to order by Jerry Baird at the Department of Mines, Minerals and Energy's Buchanan-Smith Building at 2:00 p.m. pursuant to the notice sent to all committee members.

The following members and visitors were present: Phil Shelton, UVA College at Wise; Bob Penn, Office of Surface Mining; Ian Dye, Office of Surface Mining; Jerry Baird, Alpha Natural Resources; Eddie Hannah, Lonesome Pine Soil and Water; Gerald Ramsey, Consolidation Coal Company; Glenn Graham, retiree NRCS; Carol Doss, Upper Tennessee River Roundtable; Roger Williams, Richard Davis, and Benny Wampler, Department of Mines, Minerals and Energy.

Wade Biddix, USDA, Natural Resources Conservation Service (NRCS), participated via conference call.

Members absent: Shannon O'Quinn, Tennessee Valley Authority

Jerry Baird presided, Roger Williams recorded the proceedings of the meeting, and Dawn Bays transcribed the minutes. Minutes of the September 8, 2004, were reviewed and unanimously approved.

DMLR PROGRAM UPDATE – Roger Williams

There has been a lot going on the national scene as far as the AML program. In fact, just today we received word that the House has finally agreed to extend the AML program fee collections through September 30 of this year as part of the Supplemental Appropriations Conference report. The Senate had already agreed to an extension. Senator Byrd shepherded the extension as part of the budget process, but the program basically expired last year. Previously the omnibus Appropriations Bill extended the fee collections through June 30th of this year. That date was rapidly coming upon us. With today's House action AML will have a three-month extension through September 30, 2005.

In April, there was some Congressional action on introducing some bills that would formally extend the program for 15 years. On the House side, Senator Cubin and the House Resource Committee Ranking Member, Nick Rahall, introduced House Bill 1600. It is basically the same bill that they introduced last year that went nowhere. They introduced the bill and it never went to a vote. It died last year and if it had not been the Appropriations Bill Amendment the fee collection would have ended then. Also, last month on the Senate side, Senator Rockefeller, from West Virginia introduced a companion bill. His bill is Senate Bill 961. The legislation cuts the fees that are collected

by 20%, the \$0.35 a ton fee currently would go to \$0.28 a ton and the underground fee of \$0.15 a ton currently would go to \$0.12 a ton. The legislation is basically the same as last, except they did make some changes on the Combined Benefit Fund (CBF) receiving interest. That is still a vital component of this legislation is to ensure the solvency of Combined Benefit Fund for the retired miners and orphans. The CBF group, due to some bankruptcies and court cases has gotten a whole lot bigger and is a much bigger problem as far as solvency now.

Whether these bills move forward, is anybody's guess. There are still a lot of questions and issues between the West and the East that we have discussed previously. This is probably the critical juncture for the AML program if it is going to be extended it will probably be this year. The budget fee extensions are just buying enough time for Congress to act on either or both of these bills. Congress chose not to put it in the Energy Bill, which is currently being debated.

The question was asked, why are they going for 15 years. It was sort of a compromise. They have looked at the number of priority one and two problems remaining and at some reasonable time frame to get most of these reclaimed. Part of this also involves a scrub of lower priority problems added to the inventory primarily related to acid mine drainage. This has been an issue, which a lot of people have debated. The new legislation strictly focuses funding priority on public health and safety in the 15-year period this basically gets most of the remaining priority one's and two's that currently exist in the inventory reclaimed.

One additional item concerns a recent lawsuit on whether the coal operators have to pay AML fees on export coal due to a commerce clause. Consol and Rapoca filed the case and on April 4, 2005, the US Federal Claims Court ruled that the reclamation fee as applied to coal exports is unconstitutional. There has not been a final judgment entered on that because there are still a lot of significant issues on it. Also, the government is assessing whether they want to appeal that decision. In the meantime, OSM is still requiring that all fees be paid on all coal, but if this is ultimately decided in the favor of the coal companies, then there would not be an AML tax on export coal. That could affect about 15% of production in Virginia. This would be mostly underground, some surface.

POWER POINT PRESENTATION ON RECENT AML PROJECTS – Richard Davis

The presentation was focused on giving the committee an overview of recent project activities in AML. Project accomplishments are measured or are a part of DMME's strategic planning process. One measure for the current year is the number of people benefiting from reclamation. The performance measure showed approximately 100 people benefiting.

A reclamation project recently completed but still has a small amount of clean-up work, which is the Country Cabin for Josephine Highwall Project on old Route 23, going

into Norton, VA. This was a 2004 AML Reclamation Project. A tree-planting contractor planted redbuds near the Country Cabin and the rest of the slope was planted with hardwoods. These trees were planted according to the Appalachian Regional Reforestation Initiative guidelines. The site has been hydro-seeded also. This project should be finished within the next couple of weeks.

Emergency projects are taken care of within six months after the emergency is declared through a goal. One hundred percent of the emergencies have been abated within six months. An example of a recent project is the Jackson Fork Landslide Emergency near Hurley. A contractor was on site within a week or two of the emergency declaration.

There is a performance measure to track the number of partnering and leveraging agreements. This shows the outside funding, non-AML funding, which supports reclamation projects. The Fish and Wildlife Service is working on cooperative agreements to fund projects in the North Fork of the Powell River Watershed.

The highly successful Ely Creek AMD Project, in partnership with the Army Corp of Engineers, Lee County, LENOWISCO, and TVA, was finished last summer. Now we are going to bid for the next phase in that project. In terms of loading, the single worst AMD Project in the state is in Lick Branch of Puckett's Creek. The acid mine drainage is from a mine in the Upper Mason Seam. This project should be underway by late summer.

A project near Pennington Gap is a post-act project, Stone Creek Tipple site. Post act projects are sites left unreclaimed after the AML eligible date of 12/15/05, and are funded by federal civil penalty money or other non-AML funds. This project is in the North Fork Powell Watershed and will be funded by the US Fish and Wildlife Service. In 1996, a slurry spill occurred from Lone Mt. Processing resulted in a fine and a settlement between Lone Mt. Processing and U.S. Fish and Wildlife Service (U.S.F. & W.). One million dollars of the settlement is being made available by U.S. F. & W. for watershed restoration projects. A large part of that money will be to do this project and several other projects in the watershed. A \$125,000 grant will be used to reclaim this site and to purchase the land to be used for an outdoor classroom. This site has attracted nationwide attention to use as a demonstration of how community efforts can accomplish reclamation of brownfields. This was one of six sites selected nationwide by Federal Mine Scarred Lands Task Force to use as a demonstration site.

Funding has been secured through OSM Post-Act Funding for another site. TVA has also agreed to provide funding in the amount of \$15,000. A total of \$60,000 for abandoned tipple sites will be received.

There is also interest is also in doing a reclamation project at Royal City in Buchanan County. This would be to reclaim a refuse pile. These are in inventory as priority two's as dangerous piles and embankments. We have tried to reclaim these sites for a number of years. The town of Grundy wants us to come in and take care of these

and possibly leave some areas for redevelopment for the town. Hopefully there will be enough coal in these sites to do these through Abandoned Mine Land Enhancement at no cost.

Sigmon Coal is an active surface mine near Keokee using excess soil and rock to reclaim the priority three highwalls. We do this through a no-cost agreement. The AML site is set up as an AML project and the contractor is allowed to use the excess soil and rock to reclaim the abandoned mine land site, no permit required. This reclamation is accomplished at no cost to the state. The company pays all cost of the reclamation.

Through abandoned mine land enhancement, contractors may remove coal from a project and use the proceeds of the coal sales to offset the cost reclamation. We have six of these underway now. A lot of reclamation is being done at no cost to the state. We do have some expense of tree planting.

The DMME celebrated the Reforestation Initiative with an Arbor Day Celebration. Two school groups and home-schooled students participated by planting trees on the Sigmon Coal AML project site. Approximately 400-500 hardwood trees were planted. We hope to have Arbor Day celebrations in various locations throughout the coalfields in the coming years.

A project with the Nature Conservancy (TNC), Carbon Sequestration near Dante, will happen. A power producer, Dominion, located in Richmond has funded this project in the amount of a half million dollars. We have worked through an Memorandum of Understanding with the TNC to select a site and also to work with VA Tech to develop a planning plan. This is an area in the Clinch River Watershed, which will be planted with hardwoods. The Forestland Group now owns this area. A conservation easement will be placed on this land.

September 18-21, 2005, will be the National Association of Abandoned Mine Land Association Programs Conference, hosted by Virginia in Bristol, VA.

NRCS RAMP PROGRAM and PL566 PROGRAM – Wade Biddix

Wade Biddix, NRCS Watershed Program Coordinator, presented a report that showed the NRCS Watershed Funding Trends in the Nation and in Virginia. The report listed the watershed projects in Virginia, watershed operations, and dam rehabilitation projects. Watershed funding is on a downward trend. The President's FY-06 budget proposal for watershed operations is to phase out the program. . This would affect all of the operational projects in Virginia as well as across the country. The Dam Rehabilitation Program is proposed to be cut to \$15.1 million from \$27 million and the Watershed Planning and Surveys budget is proposed to be cut to \$5.1 million. The watershed funding may be tight in the next few years.

The Watershed Funding in Virginia has declined since FY-03. We hope to classify the North Fork Powell River Project as an ongoing planning effort and not as a

new planning project. That way, they may fund it this year. Hopefully NRCS will get funding in FY-06 to do the planning in this watershed.. Hopefully we will get funded for the North Fork of the Powell River and we can help provide funding and a plan of action. Until we get funded, we have no money to do that. The PL-566 helps fund our land treatment efforts as well as our design and construction of projects. We have a little more on our technical side than on construction the last few years.

We have an ongoing Dam Rehabilitation project in Henry County on the Marrowbone Creek Dam

There are several projects in planning that are listed in the report.

Explanation of TA and FA. TA is technical assistance, anything related to watershed that is not construction comes out of the TA side. FA is the financial assistance side. This money goes into the construction of flood control projects or land treatment projects such as: pasture seeding, tree planting, waste management system, or building fences.

NRCS is working on a dam rehabilitation plan for three dams in Augusta County on the South River. This should be finished shortly. There are six dams in that watershed that currently do not meet the dam safety criteria that have to be rehabilitated. There are also four dams in Fairfax that do not meet State criteria. We recently received applications on John's Creek in Craig County. Leatherwood Creek has three dams and Upper Blackwater River in Franklin County has one dam that doesn't meet. A lot of these projects are for dams built in the 1950's, 60's and 70's. They are now classified as high hazard dams. The engineering criteria is much more strict now than when they were originally built as low hazard dams. The dams must be upgraded to current safety and design criteria for high hazard dams.

No changes are in the RAMP program at this time. As we know, this program is on the way out.

COMMITTEE BUSINESS

Election of Committee Officers. A motion was made that the officers remain the same for one more year. Motion was seconded. All were in favor of this motion.

Other comments:

Roger Williams - The Ohio Governor was instrumental in coordinating a joint governor's letter of support of Reauthorization of the AML Program. There were approximately 23 governors who signed this letter.

Benny Wampler - We are working with IRS, OSM, MSHA, Pennsylvania, VA, Illinois, IMCC on a single source coal reporting of coal operations. This will allow them

to go to one web site to key in their information and then send out to everyone. We are very close to having agreement on how to go about this.

Carol Doss invited everyone to attend the Spring Roundtable Meeting next week.

Eddie Hannah has been appointed to the Eastern Coalfield Regional Roundtable representing Virginia. The reauthorization is top on their agenda. They have asked that each state provide them with photographs of AMD projects that are priority for the states. It is a watershed-focused agenda.

Bob Penn - OSM is trying to obtain funding and get the AML Program extended. We have seen a lot of development in the watershed program.

Jerry Baird - Coal industry is improving. Companies are getting opportunities that they haven't had in a long time.

Meeting adjourned.

Roger L. Williams,
DMME Abandoned Mine Land Services Manager

RLW/dfb